

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Competitive Product List
Adding Round-Trip Mailer

Docket No. MC2013-57

Competitive Product Prices
Round-Trip Mailer (MC2013-57)

Docket No. CP2013-75

ORDER ESTABLISHING COMMENT DATES

(Issued March 7, 2014)

GameFly, Inc. (GameFly) and the Postal Service request the opportunity to supplement the record by filing additional comments.¹ For the reasons discussed below, the GameFly Motion and the Postal Service Motion are granted.

On December 18, 2013, Chairman's Information Request Nos. 1, 2, and 3 were issued.² Netflix, Inc. (Netflix) responded on January 16, 2014, and the Postal Service

¹ Motion of GameFly, Inc. for Opportunity to Comment on January 17, 2014, Responses to Chairman's Information Requests, December 24, 2013 (GameFly Motion); and United States Postal Service Motion Seeking Establishment of Response Period for Comments, February 25, 2014 (Postal Service Motion).

² Chairman's Information Request No. 1, December 18, 2013 (CHIR No. 1); Chairman's Information Request No. 2, December 18, 2013 (CHIR No. 2); Chairman's Information Request No. 3, December 18, 2013 (CHIR No. 3).

and GameFly responded on January 17, 2014.³ On January 23, 2014, Netflix requested access to nonpublic information filed by the Postal Service and GameFly.⁴ On January 24, GameFly requested access to nonpublic information filed by the Postal Service and Netflix.⁵ On January 29, 2014, the Postal Service requested access to nonpublic information filed by GameFly and Netflix.⁶ The Commission granted the Netflix and GameFly requests on January 27, 2014, and the Postal Service request on February 5, 2014.⁷

On December 24, 2013, GameFly requested an opportunity to comment on the responses to CHIR Nos. 1, 2, and 3, arguing that the Postal Service proposal raises novel issues of precedential importance. GameFly Motion at 1-2. It asserts that due process entitles parties to an opportunity to respond to one another's arguments. *Id.* at 2. It argues that an opportunity for rebuttal has heightened importance given the potential far-reaching consequences of moving the Round-Trip Mailer product to the competitive product list and the likelihood that parties will take divergent positions on disputed issues of fact. *Id.* at 3. GameFly proposes that comments on the responses be due 30 days after the parties gain access to nonpublic materials included with the responses. *Id.* at 4.

³ Response of Netflix, Inc., to CHIR 1-3, January 16, 2014 (Netflix Response); Response of the United States Postal Service to CHIR No. 1, January 17, 2014 (Postal Service Response); Response of GameFly, Inc. to CHIR 1-3, January 17, 2014 (GameFly Response).

⁴ Motion of Netflix, Inc. for Access to Nonpublic Library Reference USPS-LR-MC2013-57/NP7 of the Postal Service and to Nonpublic Answer of GameFly, Inc. to Chairman's Information Request No. 2 as well as Nonpublic Filings of the Postal Service Dated September 12, 2013, and of GameFly Dated December 26, 2013, January 23, 2014.

⁵ Consent Motion of GameFly, Inc., for Access to Nonpublic Materials Filed by the United States Postal Service and Netflix, Inc., January 24, 2014.

⁶ Motion of the United States Postal Service for Access to Nonpublic Materials Filed by GameFly, Inc. and Netflix, Inc., January 29, 2014.

⁷ Order Granting Request for Access, January 27, 2014 (Order No. 1976); Order Granting Consent Motion for Access, January 27, 2014 (Order No. 1977); Order Granting Request for Access, February 5, 2014 (Order No. 1894).

On February 25, 2014, the Postal Service filed a motion supporting the GameFly Motion. The Postal Service states that the responses contain important information about GameFly, Netflix, and the market for games and entertainment as a whole. Postal Service Motion at 2. The Postal Service asserts that the responses contain inaccurate information about the substitutability of digitized entertainment content delivered through the mail and through other channels and requests an opportunity to comment on that information. *Id.* It supports a comment date of March 7, 2014, with reply comments due one week later. *Id.* at 2-3.

On March 4, 2013, GameFly responded to the Postal Service Motion.⁸ GameFly supports the Postal Service Motion but requests that reply comments be due two weeks after initial comments. *Id.* at 1.

To supplement the record in this proceeding, the Commission will provide a period for comment on the responses to CHIR Nos. 1, 2, and 3. Interested persons may file comments on the responses to CHIR Nos. 1, 2, and 3 no later than March 21, 2014. Reply comments may be filed no later than April 4, 2014.

It is ordered:

1. The Motion of GameFly, Inc. for Opportunity to Comment on January 17, 2014, Responses to Chairman's Information Requests, and the United States Postal Service Motion Seeking Establishment of Response Period for Comments are granted as set forth in the body of this Order.
2. Interested persons may file comments on the responses to CHIR Nos. 1, 2, and 3 no later than March 21, 2014.

⁸ Response of GameFly, Inc., to Motion of USPS Seeking Establishment of Response Period for Comments, March 4, 2014.

3. Reply comments are due no later than April 4, 2014.

By the Commission.

Ruth Ann Abrams
Acting Secretary